IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 3726 of 2006

Date of Decision: 16.01.2007

Jarnail Singh ... Petitioner

Versus

State of Punjab and others. ... Respondents

CORAM : HON'BLE MR. JUSTICE J.S. KHEHAR
HON'BLE MR. JUSTICE S.D. ANAND

Present : Mr. J.S. Cooner, Advocate,
for the petitioner.

Mr. B.S. Chahal, Assistant Advocate General, Punjab,
for the respondents.

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S.D. Anand, J.

1. The petitioner, a Sub Inspector in employment of the respondents with about 30 years of service to his credit, is facing a prosecution under Sections 323, 324, 325, 326, 148, 149 of the Indian Penal Code launched by the police of Police Station Sohana. The First Information Report No.27 dated 28.05.2004 (Annexure P/1), in the context, had been filed by one Baljinder Singh son of Sh. Surmukh Singh, resident of Village Dharamgarh, Tehsil and District Mohali. While the prosecution in the Court of law is proceeding, the respondents have ordered the holding of a departmental enquiry against the petitioner on the very allegations which form the subject of charge in the criminal prosecution. The precise grievance of the petitioner is with regard to the simultaneous proceeding of the criminal trial and the departmental proceedings. The relief sought is in

the form of a writ of mandamus, directing the respondents to refrain from proceeding with the departmental enquiry afore-mentioned during the pendency of the criminal prosecution.

2. The respondents assert the correctness of the order qua departmental enquiry on an averment that there is dis-similarity of the allegations in both the proceedings. The further plea is that even otherwise the simultaneous proceeding of both the proceedings aforementioned is in order.

3. The petition deserves to succeed, for the simple reason that the similarity of allegations, as between the charge at the trial and the departmental proceedings, is apparent from a perusal of Annexure P/3 itself. It purports to contain the statement of allegations raised by the department in the departmental enquiry against the petitioner. It is illogical, in the face thereof, for the respondents to even aver dis-similarity of allegations. It would be pertinent to notice that while asserting entitlement to proceed simultaneously against the petitioner in the afore-mentioned manner, it was indicated in preliminary objection No.1 of the written statement that the action on the culmination of the departmental proceedings will be put into gear only after the outcome of the criminal case.

4. The position that, thus, emerges from the pleadings-related facts is that the departmental proceedings are based upon the very facts on the basis whereof the petitioner is facing a prosecution in a Court of Law. Though the Department could, in its discretion, proceed on the departmental front as well against the petitioner, there can be serious legal reservations about the prudence/propriety of the adoption of that course. The own stance adopted by the respondents in the course of written statement that “the action

on the culmination of the departmental proceedings will be put into gear only after the outcome of the criminal case", would appear to validate that line of reasoning. It would be plainly illogical to allow the simultaneous proceeding of domestic enquiry and the criminal trial, particularly when same set of witnesses would be examined twice over and both the authorities shall have to examine the same set of allegations. If there was even a slight variation of the nature of allegations faced by the petitioner, much could be said for advocating a view favouring allowance of simultaneous judicial trial and also domestic proceedings. However, in cases of absolute similarity of allegations, we would not adopt that stance.

5. In the light of foregoing discussion, this writ petition shall stand allowed. A writ, in the nature of mandamus, is issued directing the respondents to refrain from proceeding with the departmental enquiry during the pendency of the case FIR No.27 dated 28.5.2004 (Annexure P-1).

( S. D. ANAND )
JUDGE

( J. S. KHEHAR )
JUDGE

January 16, 2007
*vkd/SRM*